

Appl. No. : 10/646,097  
Filed : August 22, 2003

## **SUMMARY OF INTERVIEW**

### Exhibits and/or Demonstrations

None.

### Identification of Claims Discussed

46, 59 and 65.

### Identification of Prior Art Discussed

U.S. Patent No. 6,423,098 and U.S. Patent No. 6,764,520.

### Proposed Amendments

Applicant proposed to add to Claims 59 and 65 the limitation that the magnetorheological damper operate “primarily” in shear mode. In view of this limitation, Applicant also proposed removing from Claims 59 and 65 the limitations for “identifying a control state” or “configured to identify a control state,” and moving these limitations to dependent claims.

### Principal Arguments and Other Matters

U.S. Patent No. 6,423,098 does not teach or suggest the proposed amended claims. Applicant will submit a declaration to attribute portions of U.S. Patent No. 6,764,520 to the inventors of the present application to remove the rejection under 35 U.S.C. § 102(e). Applicant also indicated that it would add new claims further directed to the use of predetermined control states, which is not taught or suggested by the cited references. Applicant also indicated that it would request reinstatement of Claims 46-58, as independent Claim 46 is also directed to the use of control states. The Examiners indicated that they would need to consider whether Claims 46-58 would need to include a limitation for a magnetorheological damper to fall within the elected species.

### Results of Interview

Applicant has amended Claims 59 and 65 as indicated above, and added new dependent claims in Claims 71 and 72. Applicant has added new Claims 73-86 further directed to the use of predetermined control states. Applicant has also added Claims 87-99, which correspond to withdrawn Claims 46-58 but further recite a magnetorheological damper.

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### **REMARKS**

This is responsive to the Examiner's Office Action mailed December 14, 2005. Claims 1-45 have been canceled, and Claims 46-58 are withdrawn. Claims 59 and 65 have been amended, and Claims 71-99 are added. Thus, Claims 46-99 are pending in this application.

### **DOUBLE PATENTING**

The Examiner rejected Claims 65-69 under obviousness-type double patenting as being unpatentable over Claims 13, 14, 18, 19, 20 and 27 of U.S. Patent No. 6,610,101 B2.

In view of the amendments presented herein, Applicant respectfully requests that the Examiner reconsider the appropriateness of the double patenting rejection. Applicant will consider filing a Terminal Disclaimer once the application is otherwise in condition for allowance.

### **35 U.S.C. § 102(e) REJECTIONS**

The Examiner rejected Claims 59-70 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,423,098 B1 to Biedermann (hereafter "Biedermann"); and Claims 59-70 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,764,520 B2 to Deffenbaugh et al. (hereafter "Deffenbaugh").

Applicant respectfully traverses these rejections and the Examiner's characterization of the cited references.

As discussed in the Interview, Claims 59 and 65 have been amended to recite, among other things, "a magnetorheological damper operating primarily in shear mode." The Examiner indicated that these amendments should overcome Biedermann, and accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 59-70 over Biedermann.

With respect to Deffenbaugh, Applicant submits herewith Declarations under 37 C.F.R. § 1.132 of the co-inventors Hugh Herr, Ari Wilkenfeld and Olaf Bleck to establish that the subject matter relied upon by the Examiner in Deffenbaugh is the invention of the co-inventors of the present application, and thus, Deffenbaugh is no longer applicable as a reference under 35 U.S.C. § 102(e). Accordingly, Applicant respectfully requests that this rejection be withdrawn.

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**CLAIMS 46-58**

In view of the discussions at the Interview, Applicant respectfully requests reinstatement of withdrawn Claims 46-58.

**NEW CLAIMS**

Dependent Claims 71 and 72 have been added. For the reasons discussed above, Applicant submits that these claims are allowable over the cited art.

New Claims 73-99 have been added. Applicant submits that neither Biedermann nor Deffenbaugh teach or suggest the unique combination of these claims, particularly the use of distinct control states. Accordingly, Applicant respectfully submits that these claims are allowable over the cited art.

**CONCLUSION**

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved. Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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